

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : William H. Whitted
Patent No. : 8,011,742
Issue Date : September 6, 2011
Serial No. : 10/675,233
Filed : September 29, 2003
Title : TILT-OUT SHELF GUIDE MECHANISM SUITABLE FOR RACK MOUNT
COMPUTING SYSTEMS

Art Unit : 3637
Examiner : Jose V. Chen
Conf. No. : 9853

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Patentee hereby requests reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 1,192 days to 1,253 days is respectfully requested.

“A Delays” are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. “C Delays” are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(C). Patentee respectfully submits that the Office did not apply the proper standard for determining the period of “B Delay” under 35 U.S.C. § 154(b)(1)(B).

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

Applicant Delay

A reply to an Office Action was due on or before March 13, 2006 (the date that is three months after December 12, 2005, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on May 18, 2006. Patentee was accorded a delay of 67 days

CERTIFICATE OF (A) MAILING BY FIRST CLASS MAIL OR (B) TRANSMISSION

I hereby certify under 37 CFR §1.8(a) that this correspondence is either (A) addressed as set out in 37 CFR §1.1(a) and being deposited with the United States Postal Service as first class mail with sufficient postage, or (B) being transmitted by facsimile in accordance with 37 CFR § 1.6(d) or via the Office electronic filing system in accordance with 37 CFR § 1.6(a)(4), on the date indicated below.

November 7, 2011

Date of Deposit or Transmission

/Matthew K. Wernli/

Signature

Matthew K. Wernli

Typed or Printed Name of Person Signing Certificate

for a late response. Patentee respectfully submits that the PTO calculated delay from March 12, 2006, instead of March 13, 2006. As intended in 35 U.S.C. § 154(b)(2)(C)(ii), the three-month due date should be calculated from March 13, 2006, as March 12, 2006, falls over a weekend, and Patentee requests that the Office recalculate this period of Applicant Delay as 66 days, for delay from March 14, 2006, to May 18, 2006. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before November 6, 2006 (the date that is three months after August 4, 2006, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on February 12, 2007. Patentee was accorded a delay of 100 days for a late response. Patentee respectfully submits that the PTO calculated delay from November 4, 2006, instead of November 6, 2006. As intended in 35 U.S.C. § 154(b)(2)(C)(ii), the three-month due date should be calculated from November 6, 2006, as November 4, 2006, falls over a weekend, and Patentee requests that the Office recalculate this period of Applicant Delay as 98 days, for delay from November 7, 2006, to February 12, 2007. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before June 7, 2007 (the date that is three months after March 7, 2007, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on September 14, 2007, thereby according an Applicant Delay of 99 days. Patentee does not dispute the PTO's calculation for this Applicant Delay from June 8, 2007 (the day after the date that is three months after the date on which the Office Action was mailed), to September 14, 2007. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before February 25, 2008 (the date that is three months after November 23, 2007, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on May 23, 2008. Patentee was accorded a delay of 90 days for a late response. Patentee respectfully submits that the PTO calculated delay from February 23, 2008, instead of February 25, 2008. As intended in 35 U.S.C. § 154(b)(2)(C)(ii), the three-month due date should be calculated from February 25, 2008, as February 23, 2008, falls over a weekend, and Patentee requests that the Office recalculate this period of Applicant Delay as 88 days, for delay from February 26, 2008, to May 23, 2008. See 37 C.F.R. § 1.704(b).

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this patent should be calculated as 351 days (i.e., the sum of 66 days, 98 days, 99 days, and 88 days).

“A Delay”

A first PTO action was due on or before November 29, 2004 (the date that is fourteen months after September 29, 2003, the date on which the application was filed). The PTO mailed the first non-final Office Action on December 12, 2005, thereby according a PTO Delay of 378 days. Patentee does not dispute the PTO’s calculation for this “A Delay” from November 30, 2004 (the day after the date that is fourteen months after the date on which the application was filed), to December 12, 2005. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

In view of the period of “A Delay” detailed above, the total “A Delay” for this patent should be calculated as 378 days.

“B Delay”

There is no dispute that the Office failed to issue a patent within three years of the filing date of the application and that Patentee is entitled to “B Delay” to compensate for that Office delay. The only issue in contention is the correct length of the “B Delay” period.

The period beginning on September 30, 2006 (the day after the date that is three years after the date on which the application was filed), and ending September 6, 2011 (the date the patent was issued), is 1,803 days in length. The “PTA 36 Months” entry in the PAIR/PALM system indicates that a total of 135 days were awarded for “B Delay” for this patent. Patentee respectfully submits that the PTO’s calculation of this “B Delay” is incorrect.

Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of “B Delay” “any time consumed by continued examination of the application.” In the present matter, a Request for Continued Examination was filed on February 12, 2007. The Director erred in the calculation of patent term adjustment by subtracting from “B Delay” a period of time that was not “consumed by continued examination of the application.” The PTO mailed a Notice of Allowance on July 13, 2011, thereby closing examination of the application on that date. Thus, no continued examination took place during the 56 day period from July 13, 2011 (the mailing date of the

Notice of Allowance), until September 6, 2011 (the date the patent was issued). Accordingly, 56 days of “B Delay” should have been included in addition to the 135 days accorded by the Director, for a total “B Delay” of 191 days. Patentee respectfully submits that the Office’s calculation of “B Delay” is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 191 days.

“C Delay”

Patentee filed a Notice of Appeal on May 23, 2008, and the PTO mailed a Board of Patent Appeals and Interferences decision reversing the Examiner on March 23, 2011, thereby according a PTO Delay of 1,035 days. Patentee does not dispute the PTO’s calculation for this PTO Delay from May 23, 2008 (the day the Notice of Appeal was filed), to March 23, 2011. See 37 C.F.R. §1.702(2).

In view of the period of “C Delay” detailed above, the total “C Delay” for this patent should be calculated as 1,035 days.

Overlap of “A Delay” “B Delay” and “C Delay”

As detailed above, 378 days of “A Delay” accumulated during the following period:

November 30, 2004, to December 12, 2005.

As detailed above, 191 days of “B Delay” accumulated during the following periods:

September 30, 2006, to February 12, 2007; and

July 13, 2011, to September 6, 2011.

As detailed above, 1,035 days of “C Delay” accumulated during the following period:

May 23, 2008, to March 23, 2011.

As such, the periods of “A Delay” “B Delay” and “C Delay” do not overlap (i.e., occur on the same calendar day).

Terminal Disclaimer

This patent is not subject to a terminal disclaimer.

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Conclusion

In consideration of the events described above, Patentee believes the PTA calculation of 1,192 days is incorrect. As such, Patentee respectfully requests reconsideration of the PTA in the following manner:

- 1) Total PTO Delay should be calculated as 1,604 days (i.e., the sum of 378 days of "A Delay," 191 days of "B Delay," and 1,035 days of "C Delay");
- 2) Total Applicant Delay should be calculated as 351 days; and
- 3) Total PTA should be calculated as 1,253 days.

The \$200 fee required under 37 C.F.R. § 1.18(e) is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other credits or charges to Deposit Account No. 06-1050, referencing Attorney Docket No. 16113-1313001.

Respectfully submitted,

Date: November 7, 2011

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